

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:

ERIC N. REYBURN

Debtor

Chapter 11

Case No. 09-20683-FJB

**DEBTOR'S MOTION FOR CONTEMPT AND SANCTIONS
AGAINST BAYVIEW LOAN SERVICING, LLC**

Eric N. Reyburn (the "Debtor"), through his counsel Michael Van Dam ("Counsel") files this Motion for Contempt and Sanctions against Bayview Loan Servicing, LLC for its failure to comply with the order confirming the Debtor's Chapter 11 Plan. In support of the relief requested in the Motion, the Debtor respectfully represents as follows:

FACTUAL ALLEGATIONS

1. The Debtor filed this case on November 4, 2009 (the "Filing Date").
2. The First Amended Chapter 11 Plan was confirmed on June 20, 2011 (See "Order" at Docket 720).
3. As of this filing, Bayview Loan Servicing ("Bayview") purports to hold and or service the loans/mortgages on the Debtor's property located at 94 Alpine Street, Cambridge, Massachusetts
4. Bayview, and, if applicable, its predecessor America's Servicing Company continue to compute the loan under the pre-confirmation contractual terms. There is no doubt that the Bayview is in contempt of the Order.

5. The Debtor's First Amended Chapter 11 Plan, as the Class 22, calls for a \$535,000 principal fixed at a rate of 3.5% per annum over 20 years. See Statement attached hereto denoting an interest rate of 5%.

RELIEF REQUESTED AND BASIS THEREFOR

6. Bayview's failure to abide by the Order has caused the Debtor significant problems. The Debtor has attempted to resolve this without Court intervention. The Debtor has from the outset of confirmation attempted to pay the note, however, Bayview will currently not accept payment.
7. By this Motion, the Debtor requests that this Court enter an Order pursuant to section 105(a) of the Bankruptcy Code and rule 9020 of the Federal Rules of Bankruptcy Procedure: (1) holding that Bayview is in civil contempt for having failed to abide by the Order; (2) allowing Bayview to cure the contempt by immediately updating its records to reflect the parameters outlined in the Plan; (3) reimbursement of the Debtor's legal fees and costs; and (4) reimbursement of filing fees along with fees due to the United States Trustee incurred while the case remains open (5) reimburse the Debtor for his time and expense; and (6) any other relief, including punitive damages, this Honorable Court deems just and proper.

WHEREFORE, the Debtor requests relief as requested herein.

Eric Reyburn
By his attorney,

/s/ Michael Van Dam
Michael Van Dam, Esq. BBO# 653979
Van Dam Law LLP
233 Needham Street
Newton, MA 02464
Tel: 617-969-2900
mvandam@vandamlawllp.com

Dated: February 2, 2017

**BAYVIEW®**

LOAN SERVICING

Bayview Loan Servicing, LLC

P.O. Box 650091

Dallas, TX 75265-0091

Phone: 1-800-457-5105

Statement Date: 11/15/16

1.855.813.7137

337

FORECLOSURE

Eric N Reyburn
204 Garden St
Cambridge, MA 02138-1258



(w) 22

Account Number [REDACTED]
Payment Due Date 12/01/16
Total Amount Due \$30,334.77

If payment is received after 12/16/16, a \$119.78 late fee will be charged.

Account Information

Outstanding Principal Balance	\$502,842.99
Deferred Amount	\$0.00
Interest Rate	5%
Escrow Balance	
Late Charge Balance	-\$13,710.18
Rec Corp Advance	\$479.12
Prepayment Penalty	\$701.95
Unapplied Funds	N
Property Address	\$2,698.00
	94 ALPINE ST
	CAMBRIDGE MA 02138

Explanation of Amount Due

Principal	\$1,937.41
Interest	\$2,055.32
Escrow (Taxes and Insurance)	\$850.93
Interest Rate	5%
Regular Monthly Payment	\$4,843.66
Fees & Charges Assessed	\$36.00
Past Due Amount	\$25,455.11
Total Amount Due*	\$30,334.77

Payments will be applied in order that they become due (oldest first) unless bankruptcy or other court ordered payment plan is in place.
*Total amount due may not include recoverable fees not yet charged to the account, and may not include unapplied funds/totals not yet applied to the account.

Transaction Activity (10/18/16 to 11/15/16)

Date	Description	DEBITS	CREDITS
10/18	Property Inspection		
10/28	City Tax Disbursements	25.00	
		3080.61	

*Additional Transaction Activity may be found on Page 3

Past Payments Breakdown

	Paid Last Bill	Paid Year to Date
Principal	\$1,889.68	\$16,727.55
Interest	\$2,103.05	\$19,207.02
Escrow (for Taxes & Insurance)	\$881.51	\$7,933.59
Fees & Charges	\$0.00	-\$15.95
Partial Payment (Unapplied)**	-\$881.31	\$2,698.00
Total	\$3,992.93	\$46,550.21

Important Messages

****Partial Payments:** Any partial payment that you make is not applied to your mortgage payment, but instead is held in a separate suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.

*This is your Principal Balance only, not the amount required to pay your loan in full. Please contact Customer Service for your exact payoff balance. In the event you are in default or foreclosure, you must contact 1.855.813.7137 for payoff information.

Your Point of Contact is Dave Maitra and can be reached on 877-221-0581.

****Delinquency Notice****

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure – the loss of your home. As of 11/15/16 you are 137 days delinquent on your mortgage.

Recent Account History:

Payment due: 06/01/16: Fully paid on 11/15/16
Payment due: 07/01/16: Unpaid balance of \$4,874.24
Payment due: 08/01/16: Unpaid balance of \$4,874.24
Payment due: 09/01/16: Unpaid balance of \$4,874.24
Payment due: 10/01/16: Unpaid balance of \$4,843.66
Payment due: 11/01/16: Unpaid balance of \$4,843.66
Current payment due 12/01/16: \$4,843.66

Total: \$30,334.77 due. You must pay this amount to bring your loan current.

If You Are Experiencing Financial Difficulty: If you need further counseling, you can call the Homeowner's HOPE Hotline at 1.888.995.HOPE (4673) or contact us at <http://www.consumerfinance.gov/mortgagehelp/>. The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.

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CERTIFICATE OF SERVICE

I, Michael Van Dam, hereby certifies that the attached Motion has been served postage prepaid upon the following parties this 1st day of February, 2017:

Bayview Loan Servicing, LLC
PO Box 650091
Dallas, TX 75265-0091

Harmon Law Offices PC
150 California Street
Newton, MA 02459

Respectfully submitted,
Debtor, by his Attorneys,

/s/ Michael Van Dam
Michael Van Dam, Esq.
(BBO # 653979)
Van Dam Law LLP
233 Needham Street
Needham, MA 02464
Tel: 617-969-2900
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